



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, CNC, RP

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for more time to make this application
- b. An order to cancel the 10 day Notice to End Tenancy dated June 7, 2016
- c. An order to cancel a one month Notice to End Tenancy
- d. A repair order

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on June 7, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 14, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 7, 2016?
- b. Whether the tenant is entitled to an order for repairs.

### Background and Evidence

The tenancy began 2 years ago. The tenancy agreement provided that the tenant(s) would pay rent of \$670 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$325 at the start of the tenancy.

The landlord testified the tenant has failed to pay the rent for the months of June and July and the sum of \$1340 remains outstanding.

The tenant testified he does not have the money to pay the arrears of rent.

The tenant further testified the rental unit contains an extreme fire hazard. His rental unit is located above the laundry room. There is a hole in the firewall that separates the laundry room from an adjoining rental unit which contains a galvanized pipe. The tenant testified he requested that the landlord fix this issue for many months but the landlord failed to do so.

The landlord responded by relying on a Fire Inspection Order dated June 20, 2016 from the Maple Ridge Fire Department that states the rental property passed the fire inspection with the exception the landlord was not permitted to store a sink in the electrical room. She testified she specifically asked about the hole in the wall and the fire department stated it was not a concern. She also relies on a report from a fire inspection service dated June 13, 2016 which does not indicate a problem.

Preliminary Matters:

The tenant stated the landlord has not served a one month Notice to End Tenancy on the Tenant. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy.

The landlord stated that on July 11, 2016 she filed an Application for Dispute Resolution/Notice of Hearing claiming an Order for Possession and a monetary order for non-payment of rent. The hearing is set for August 24, 2016. She asked the matter be brought forward to be heard with the tenant's application. The tenant objected. Given the late application I determined it was not appropriate to bring the matter forward.

Analysis:

I determine there is no basis for cancelling the 10 day Notice to End Tenancy. The landlord used the correct form. The tenant acknowledged in the hearing that he owes rent and he does not have the money to pay for the outstanding rent. Section 26(1) provides as follows:

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not have a legal right to withhold the rent even if he believed the landlord was not complying with the Act until he has first obtained an order permitting this from the Residential Tenancy Branch.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 10 Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 5 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

I dismissed the tenant's application for a repair order as the tenant failed to prove the landlord has breached fire code regulations. The rental property has been inspected by the fire department within the last month and the fireguard inspection service within the last 5 weeks and there is no indication of a problem. The tenant failed to produce expert evidence of a problem. This claim is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: July 19, 2016

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Residential Tenancy Branch